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Current Topics.

Divorce for Insanity: Guardian *ad litem*.

THE attention of readers should be drawn to a recent statement made by Sir BOYD MERRIMAN, P., relative to the duties of the guardian *ad litem* in divorce suits brought on the ground of a respondent's incurable unsoundness of mind and detention for the statutory period under care and treatment within the meaning of s. 2 of the Matrimonial Causes Act, 1937. In one such case which came before the court about a week ago, the learned President was informed that no independent medical opinion had been obtained on behalf of the guardian *ad litem* of the respondent. According to the report in *The Times* his lordship said that it had been laid down as a general practice that the interests of such respondents, who could not appear for themselves, should be safeguarded by an independent medical examination unless there were very special circumstances. He wished to stress that if a guardian *ad litem* was appointed by family arrangement the duties of the guardian must be performed as strictly as if the matter were in the hands of the Official Solicitor, on whom he (his lordship) knew he could rely for searching inquiries on the points on which the court had to be satisfied.

Costs.

AN old and not unfamiliar story has come down to us of a certain judge, in whom the sense of humour was highly developed, who, having dealt exhaustively with the legal problems involved in the case which he had just tried, proceeded with mock gravity to say: "Now we come to the real merits of the dispute—the question of costs." No doubt costs play a notable part in litigation; that is inescapable, and has to be faced. Hitherto it has been generally assumed that the House of Lords will refuse to entertain an appeal where the question involved is one of costs only, but last week LORD WRIGHT, in an appeal from Northern Ireland, stated that this cannot be regarded as an inflexible rule. In that case the appellants had been ordered to pay the costs involved of their unsuccessful opposition to the grant of a licence for the sale of intoxicating liquors in Belfast, and the House held that they were entitled as "persons aggrieved" to bring the case by way of appeal to the House. It is true that their appeal failed on the construction of a section of the relevant licensing statute, but LORD WRIGHT'S *dictum* should be borne in mind. According to "Blackstone," the common law did not in terms allow costs, though in reality they were considered and included in the grant of damages if these were given. The Statute of Gloucester was, it appears, the first legislative authorisation for the allowance of costs *eo nomine*. Oddly enough, says "Blackstone," a defendant received no costs till much later, but at last it came to be recognised that a successful defendant should be awarded costs just as the plaintiff would have had if he had been the successful litigant.

Judge and Jury in Civil Cases.

A STATEMENT, the purport of which should be brought to the notice of readers, was recently made by GODDARD, L.J., in the Court of Appeal, concerning the relative functions of judge and jury in civil cases. The appeal before the court arose out of a motor car accident and it appears that counsel for the defendant had invited the jury to stop the case. The learned Lord Justice said that it ought to be known that it was not proper for counsel to invite a jury to stop the case. That was the function of the judge. His Lordship added that his remarks were to be considered as limited to civil cases. The foregoing information is derived from the note on the matter which appeared in *The Times* of 2nd December.

War Damage to Property: Basis of Compensation.

THE first report of the Committee on the Principles of Assessment of Damage discusses the basis of compensation under the Government's scheme in connection with war damage to property. It will be recalled that the Government has undertaken to pay compensation at the end of hostilities on the highest scale possible in the light of the country's financial circumstances at the time. The committee suggests that immovable property, comprising lands, buildings, plant and machinery, should be assessed at (*a*) the cost of reasonable reinstatement estimated by reference to the level of building costs prevailing in March, 1939, credit being taken for the old materials, or (*b*) the diminution in market value, whichever is the less. Diminution in market value is defined as the difference between the market value of the property in its condition immediately before the damage occurred and its market value in its damaged condition, the value in each case being calculated on the basis of the market values prevailing in March, 1939, assuming the property to be

freehold in possession and free from encumbrances and from any burden, charge or restriction other than rates and taxes. Where property was not in being in March, 1939, it is recommended that regard should be had in estimating the market value to the original cost of the property. In the case of property purchased after the outbreak of war but before the occurrence of the damage, it is recommended that the assessment of damage should not exceed the price paid by the claimant if that price was less than the market value calculated on the basis of such values prevailing for similar property in March, 1939. A definite date at which market values should be fixed has been proposed with the object of preventing speculators, or their co-sharers in the compensation fund, from deriving a profit at the expense of the State. The report also deals with movable property in the form of household furniture and plant and machinery. The recommended basis of valuation in regard to the first of these subjects is the amount which a willing seller might be expected to receive from a willing buyer in March, 1939, while the value to be placed on plant and machinery should, it is suggested, be its value if transferred with the business as a going concern. The report, which is unanimous, was published on 30th November as a White Paper (Cmd. 6136, H.M. Stationery Office, price 2d. net).

The Postponement of Enactments (Miscellaneous Provisions) Bill.

AMONG the measures affected by the Postponement of Enactments Bill, which was read a second time in the House of Commons on Wednesday, is the House-to-House Collections Act, 1939. This measure was, prior to the change effected during the report stage in the House of Lords on 13th July, known as the Charitable Collections (Regulations) Bill, and will possibly been better known to our readers under its former title. Its provisions have frequently been discussed in these columns and it will be unnecessary to repeat the information which has been given. It was recently stated in *The Times* that the regulations under the Act are to be made very shortly, and that the charitable organisations, though quite willing to put up with any inconvenience the Act may cause, require some notice of these regulations. This, it is said, is the reason for the postponement. Had there been no war the regulations would have been issued some time ago, and the Act would have come into force on 1st January, 1940. Under the new arrangement it will not come into force until 1st April. Certain provisions of the Adoption of Children Regulation Act, 1939, the Marriage (Scotland) Act, 1939, and s. 140 of the Law of Property Act, 1922, are also affected by the Bill.

Mitigating Black-out Conditions: Illuminated Signs.

CONDITIONS governing the use of illuminated signs during the hours of darkness have recently been circulated by the Ministry of Home Security to police authorities. These signs are now permitted in windows and doorways of shops, hotels, restaurants and places of public entertainment, in order to indicate the nature of the business carried on and that the premises are open. The sign must not exceed three feet in width or two feet in height, and the area of the illuminated letters or symbols must not exceed in the aggregate 144 square inches. The conditions also lay down a maximum brightness for the illuminated letters, the effect of these provisions being that the sign must be inconspicuous at a distance of 100 feet. The sign must be mounted so that its face is vertical and placed inside a window or within a doorway. Illuminated signs may not be displayed above the ground floor, and no light may be visible other than from the illuminated letters or symbols. Flashing signs are forbidden. The signs permitted may be illuminated only when the premises are open to the public or, in the case of a shop, at a time when customers may be served, and they must be extinguished immediately an air-raid warning is sounded.

The Resumption of Driving Tests.

THE Minister of Transport recently indicated in answer to a question put to him in the House of Commons that arrangements have been made for the resumption of tests of competence to drive motor vehicles. The transfer of the driving examiner staff to urgent war duties had, he said, inevitably caused inconvenience to many people who were thereby prevented from taking the driving test. He intimated, however, that the time had come when the progress which had been made with the road transport emergency organisation would enable him to release some of the examiners for their ordinary work. Applications for driving tests would be accepted in the regional offices on or after 1st December, and arrangements were being made for resumption of the official driving test as from 1st January, 1940.

Recent Decisions.

IN *Fraser-Wallas and Another* v. *Elsie and Doris Walters (a Firm)* (*The Times*, 30th November), LORD HEWART, C.J., held that the plaintiffs were not entitled to damages from the producers in respect of personal injuries sustained as the result of a heel from the shoe of a performer becoming detached during a variety turn, flying through the air and hitting one of the defendants in the face. His lordship held that the performers were not the servants of the defendants and found on the evidence that there was no negligence on the part either of the latter or of the former.

In *Halifax Building Society* v. *Salisbury* (*The Times*, 5th December) the Court of Appeal (SLESSER and LUXMOORE, L.JJ., and ATKINSON, J.) upheld a decision of a county court judge to the effect that the respondents were entitled to possession under a building society mortgage. The society had advanced an amount equal to 95 per cent. of the value of the property and had taken collateral security in the form of a personal guarantee from two of the directors of the firm of builders for a sum equal to the difference between the amount advanced and an amount equal to 75 per cent. of the value of the property. It was held that the mortgage was not contrary to s. 13 of the Building Societies Act, 1874, and that the absence of knowledge by the mortgagor of the collateral security was in the circumstances immaterial. See *per* STIRLING, J., in *Sheffield and South Yorkshire Permanent Building Society* v. *Aizlewood*, 44 Ch. D., at p. 451, and *Bradford Third Equitable Building Society* v. *Borders* [1939] Ch. 520.

In *Greenaway* v. *Greenaway* (*The Times*, 6th December) SIMONDS, J., held that the plaintiff had been inexcusably assaulted by his brother the defendant, and that a notice which he had given to his brother expelling him from the partnership in a firm was a valid notice. The partnership articles provided that if either partner should be expelled except for ill-health, accident or other similar cause, the other might on giving notice within three months from the expulsion purchase the share of the expelled partner. The learned judge held that inasmuch as no such notice had been given this clause had no operation, but that the clause providing for the realisation of the partnership property, the repayment to each of the partners of the amount of his capital with interest thereon, and the winding up of the business, applied.

In *Shallard* v. *Arline* (*The Times*, 6th December) the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.) upheld a decision of CASSELS, J., who had awarded the respondent £788 4s. 10d. damages and costs in an action in which damages were claimed on grounds of fraud, breach of contract and negligence, from the appellant and another person in connection with rejuvenation treatment. The latter could not be served with a writ as he could not be found. The appellant did not admit the alleged harmful effects of the treatment, and had denied that she and the other defendant were partners or acting jointly in respect of the matters complained of, and had stated that she herself undertook no responsibility for the treatment.

Criminal Law and Practice.

WHAT IS WORK?

THIS question was the issue in a recent appeal which came before the Divisional Court on 13th October by way of case stated by a metropolitan magistrate (*E. Wells & Son, Ltd.* v. *Sidery*).

Section 19 (1) of the Road Traffic Act, 1930, provides, *inter alia*: "With a view to protecting the public against the risks which arise in cases where the drivers of motor vehicles are suffering from excessive fatigue, it is hereby enacted that it shall not be lawful in the case of . . . (*c*) any motor vehicle constructed to carry goods other than the effects of passengers; for any person to drive or cause or permit any person employed by him or subject to his orders to drive—(i) for any continuous period of more than five hours and one half; or (ii) for continuous periods amounting in the aggregate to more than eleven hours in any period of twenty-four hours commencing two hours after midnight; or (iii) so that the driver has not at least ten consecutive hours for rest in any period of twenty-four hours calculated from the commencement of any period of driving . . ." Section 19 (2) provides: "For the purposes of this section (*a*) any two or more periods of time shall be deemed to be a continuous period unless separated by an interval of not less than half-an-hour in which the driver is able to obtain rest and refreshment; (*b*) any time spent by a driver on other work in connection with a vehicle or the load carried thereby . . . shall be reckoned as time spent in driving . . ." Subsection (4) provides: "If any person acts in contravention of this section, he shall be guilty of an offence: Provided that a person shall not be liable to be convicted under this section if he proves to the court that the contravention was due to unavoidable delay in the completion of any journey arising out of circumstances which he could not reasonably have foreseen."

The short facts were that a driver employed by the appellants had been in charge of one of their lorries on the day in question from 8 a.m. to 2.30 p.m., but during that time had only actually driven the vehicle for a total period of not more than ninety minutes. He had actually commenced work at 7 a.m. and at 8 a.m. he drove the lorry to a wharf. From 8.5 a.m. to 11.30 a.m. the lorry and its trailer were being loaded at the wharf, and during that time the driver stood by and did no actual work in connection with the lorry or otherwise. He spent part of the time in a neighbouring coffee shop and the remainder of the time in the company of other drivers, watching the loading or in idleness. At about 11.30 a.m. he drove the lorry for about half an hour from the wharf to a warehouse. The process of unloading at the warehouse took from 12.5 p.m. to 2.10 p.m., and during that time also the driver stood by and did no work in connection with the unloading of the lorry or otherwise. At 2.30 p.m. he finished his work.

The magistrate said that the case showed that the driver was doing more than merely waiting, as such waiting occurred on the employers' premises, and added that the driver could have exercised authority in reference to the work done by the trailer and had a responsibility for his lorry if and when moving, and was acting under the direction of his employers. He also decided on the evidence that the period of waiting by the drivers of lorries at the docks before loading was a state of affairs of common occurrence, and as it could have been foreseen it was not unavoidable delay within the proviso to s. 19 (4) of the Act. He therefore found the appellants guilty.

At the hearing before the Divisional Court it was argued on behalf of the respondent that "driving" in s. 19 was equivalent to "being employed as and earning his wages as the driver of the lorry, and reliance was placed on s. 19 (2) (*b*) (above). In reply to this contention, Mr. Justice Humphreys, who delivered the judgment of the court, said: "It is not to be forgotten that s. 19 is expressed to protect the public against the dangers which may arise if drivers are suffering from excessive fatigue, and para. (i) of subs. (1) deals with one of the ways in which excessive fatigue may be brought about, other ways indicated being the matters prohibited in paras. (ii) and (iii) of that same subsection." He held, therefore, that there was no ground for giving a strained or unnatural meaning to the word "work" in subs. (2) (*b*) so as to include watching other men at work or "eating his dinner at a distance from the lorry."

With regard to s. 19 (2) (*a*), his lordship said that that provision only came into operation where there were found to be periods of driving which in the aggregate totalled more than five hours and a half. The appeal was allowed and the conviction quashed.

There is an instructive as well as a humorous aspect of this appeal. Apart from the startling contention that they also work who only stand and watch, it is instructive to consider the sort of error in interpretation of which the learned magistrate and the respondent's advisers were guilty. It is a commonplace in the interpretation of the Workmen's Compensation Act, 1925, that a person may meet with an accident arising out of and in the course of his employment even though he may not be actually working at the time, and it may be that the influence of that statute has caused some persons to confuse the term "employment" with the word "work." The word must be construed according to its plain and natural meaning, full regard being had to the context in which it appears. For example, the court in *Prior* v. *Slaithwaite Co.* [1898] 1 Q.B. 881, in discussing the meaning of "work" within the Factory and Workshop Act, 1901, said: "the nearest approach to a practical definition is, *semble*, the doing something which the doer would have to do if working under orders, and it is none the less 'work' because done for 'self-amusement.'" In the context in which the word appears in *E. Wells & Son, Ltd.* v. *Sidery* the court could not have made a similar statement to this, in view of the express statement of the object of s. 19 in the body of the section.

The Dog and the Child.

THE case of *Lee* v. *Walkers* (reported p. 925 of this issue) is of considerable interest to parents and dog owners, and to their legal advisers. As, at the end of the plaintiff's evidence, the learned judge accepted the defendants' submission of no case, he must be assumed to have done so on the basis that the evidence given for the plaintiff was true.

On this basis, the facts were that the defendants kept a dog, apparently a cross between a chow and an airedale, which to their knowledge was fierce and accustomed to bite mankind, in that it had previously bitten a child and the child's father had complained to one of the defendants. At 8.30 p.m. on 8th September last the infant plaintiff, then aged four and a half years, was taken by his grandmother into the defendants' fried-fish shop and restaurant, and, while the grandmother was waiting to be served, he wandered off into a side room, not part of the restaurant, and into which he had received no permission to go. Whilst there the child patted the dog, which was feeding, and tried to get it to play. It refused; but when it had finished its meal the child put his arms round the dog and kissed it. Thereupon the dog bit the child and caused the injuries complained of.

Wrottesley, J., therefore, had to deal with the case of a child, whilst trespassing, being bitten by a fierce dog, not in fact kept under control by its owners. Now, in theory, the duty of an occupier of property to trespassers is the same whether the trespassers are adults or children; the duty is to avoid causing injury to them wilfully, or by such recklessness, as the law regards as tantamount to wilfulness. In practice, this duty connotes, in the case of children, the avoidance of the creation of any danger on the land when

the occupier knows, or ought to know, that children are or will be within the ambit of the danger. This would seem to be in accordance with the explanation given by Scrutton, L.J., in *Mourton* v. *Poulter* [1930] 2 K.B. 183, at p. 190, of the distinction between the English case of *Excelsior Wire Co.* v. *Callan* [1930] A.C. 404, and the Scots case of *Addie & Sons* v. *Dumbreck* [1929] A.C. 358. All three cases dealt with injuries suffered by a child or children from a danger created by the defendants or their servants.

In *Addie's Case*, the infant plaintiff, aged four years, was trespassing in a field, where children went with the knowledge of the defendants' servants, although warned off by them from time to time. The child was there injured by a horizontal iron wheel, which was set in motion by means of a dynamo at the pit-head, from where the wheel was invisible to the person working the dynamo. In *Callan's Case*, the defendants operated a wire rope round a sheave, for the purpose of moving trucks on a siding. There was a playground next to the land on which the sheave was placed, and children frequented the land to the knowledge of the defendants' servants. When about to operate the rope the defendants' servants used to drive the children away. On the occasion of the accident to the plaintiffs, a sister and brother, aged five and nine years respectively, the defendants' servants ordered the children away and then left the sheave and started the dynamo. The little girl was seen swinging on the rope and was pulled into the sheave, and so was her brother who tried to rescue her. In *Addie's Case* the defendants were held not to be liable; in *Callan's Case* they were held to be liable. On the assumption that English and Scots law are the same on this point, it is by no means easy to reconcile these two cases.

In *Mourton* v. *Poulter*, *supra*, the Court of Appeal had to attempt this difficult task. There the defendant was a contractor engaged in cutting down a large elm tree on land where children used to play, but without the leave, express or implied, of the owner. Accordingly they were trespassers. Whilst the work of cutting down the tree was in progress there were many children present, and the defendant and his servant more than once drove them back from the tree. At 5.15 p.m. the defendant, knowing that the tree would fall in about two minutes, cut the last root without further warning and the tree fell on three boys, of whom the plaintiff, aged ten years, was the only one injured. The Court of Appeal held that in the circumstances the defendant owed a duty even to a trespasser to warn him of the danger, and accordingly the defendant was liable. Scrutton, L.J., after discussing *Addie's Case* and *Callan's Case*, at pp. 189–90 of [1930] 2 K.B., expresses the view with some hesitation that the only distinction between the two cases is that in *Addie's Case* the man operating the rope could not see the children, whilst in *Callan's Case* the operator could have seen the children if he had looked.

It looks very much as if this duty would be owed to a trespasser in the case of a dangerous animal on land, a point which *Lowery* v. *Walker* [1911] A.C. 10, left undecided, as the adult plaintiff in that case was held to have an implied licence to be on the land, so that mere acquiescence was held sufficient to raise the duty. In *Lee* v. *Walkers*, *supra*, there was no evidence that the defendants knew that children in general, or the plaintiff in particular, went into the room where the dog was, or would go into that room. If there had been such evidence, it would seem that the plaintiff should have succeeded, even though a trespasser. In the absence of such evidence, however, the plaintiff should fail.

The learned judge, however, decided the case on a different and somewhat unexpected ground. Given that there was an absolute duty to keep the dog under control, yet it must be subject to the limitation that the plaintiff should not have brought the injuries on himself. This limitation was expressed by Lord Esher, M.R., in the elephant case, *Filburn* v. *People's Palace* (1890), 25 Q.B.D. 258, at p. 260, in these words: "it (the elephant) falls within the class of animals that a man keeps at his peril, and which he must prevent from doing injury under any circumstances, unless the person to whom the injury is done brings it on himself." As the plaintiff succeeded in that case, this proviso was *obiter*, but in *Marlor* v. *Ball* (1900), 16 T.L.R. 239, the Court of Appeal decided the case on that basis. There the plaintiff, an adult, when at a pleasure ground occupied by the defendant, went into the stables where the zebras were kept, without permission, and stroked one of the zebras, which pushed him through a partition into the stall of another zebra, which bit him. It was held that he had brought the injury on himself, and failed, although zebras are *feræ naturæ*.

Now it was on this basis that Wrottesley, J., decided the present case. He held that the plaintiff had brought the injury on himself, for even if the dog had not been furious, but "of the mildest disposition," it would still have bitten the infant plaintiff in the circumstances. Apparently he based this on the view that the child was interfering with the dog when it was feeding.

Presumably this was not a decision that the child was guilty of contributory negligence, in that a child of four and a half years would not be negligent in wanting to play with a dog, although a strange one. The basis of the decision appears to be that, although the defendants failed to keep their fierce dog under restraint, and although the plaintiff was injured by that fierce dog, the first was not a proximate cause of the second, because another act of causation excluded it, namely, the act of the plaintiff in doing what no dog will tolerate, interfering with it when feeding. It is not known whether this case will go further, nor is it suggested that if it does it will be reversed, but at the moment it marks a reversal of the tendency of the law in recent years to save young children even from themselves.

Company Law and Practice.

Rejection by Liquidators of Proofs for Judgment Debts.

WHEN a proof is made in a liquidation in respect of a judgment debt, the judgment is not necessarily conclusive; the liquidator can examine the consideration for a judgment and if he believes that it was obtained by collusion or fraud, for example, he can reject the proof. The authorities relevant to this matter are mostly bankruptcy cases: the law on the point was stated by Bigham, J., in *Re Van Laun* [1907] 1 K.B. 155, in a passage which was adopted by the Court of Appeal in the same case ([1907] 2 K.B. 23). Speaking of the trustee in bankruptcy, he said: "The trustee's right and duty when examining a proof for the purpose of admitting or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgment recovered against the bankrupt, no covenant given by or account stated with him, can deprive the trustee of this right. He is entitled to go behind such forms to get at the truth, and the estoppel to which the bankrupt may have subjected himself will not prevail against him." In *Re Home & Colonial Insurance Co., Ltd.* [1930] 1 Ch. 102, Maugham, J., as he then was, held that the position of a liquidator when examining a proof for the purpose of admitting it or rejecting it in a winding up, is for this purpose exactly the same as that of a trustee in bankruptcy.

The reason why the consideration for a judgment debt can be inquired into in a bankruptcy or liquidation is obvious, when it is borne in mind that the object of the bankruptcy and winding up provisions is to procure the distribution of the available assets among the just creditors. As James, L.J., said in *Ex parte Kibble*, 10 Ch. App. 373, "if a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations

without any debt being due on them at all; it is therefore necessary that the consideration of the judgment should be liable to investigation"; and, *mutatis mutandis*, the same is true of a company. This is not to say, however, that in a liquidation a judgment is no evidence of a debt and that the claimant must always prove the consideration for the debt independently of the judgment; nor, conversely, is it accurate to say that a judgment must stand as good evidence of a debt unless the liquidator can prove that no consideration was given for the debt. The true position seems to be midway between these two views—a judgment debt is *prima facie* evidence of a provable debt, but if there are circumstances which cast suspicion on the judgment or on the debt on which it was founded the liquidator can properly call upon the claimant to prove the consideration for the debt; it is not, in such a case of suspicion, for the liquidator to prove that there was no consideration, for he cannot, usually, have the means of doing so (see *Ex parte Anderson*, 14 Q.B.D. 606, at pp. 609–610, *per* Brett, M.R.). *Prima facie*, a judgment ought to be considered as binding; the mere suggestion that it is bad is not sufficient warranty for going behind the judgment and inquiring into the validity of the debt. There should be some evidence of circumstances tending to show that there has been fraud or collusion or miscarriage of justice (see *In re Flatau*, 22 Q.B.D. 83, *Ex parte Revell*, 13 Q.B.D. 720).

If these are the principles to be applied, it is clear that the circumstances in which a judgment was obtained, quite apart from the nature of the cause of action, must be very material to the question whether there was true consideration for the judgment debt. Thus, when there was a real fight between the parties and the material issues were contested, the judgment must, it would seem, be regarded as conclusive. On the other hand, in the case of a judgment by default, a liquidator would properly consider whether on the available facts there was consideration for the judgment, i.e., whether the company had not in fact a good defence to the action. Again, a judgment by consent, though stronger evidence of the validity of a debt than a judgment by default (see *ex parte Lennox*, 16 Q.B.D. 315, at p. 323, *per* Lord Esher, M.R.), may well require investigation. Suppose, for example, an action is brought to recover a gambling debt and the debtor does not plead that it was a gambling debt, but either allows judgment to go against him by default or consents to judgment, it would appear that his trustee in bankruptcy could properly go behind the judgment and reject a proof for the debt (see *ex parte Kibble*, *supra*, at p. 378). So, if a company entered into an *ultra vires* contract and the other party brought an action on the contract, then if the company allowed judgment to go by default or consented to judgment, the liquidator in a winding up would, I suppose, be entitled to go behind the judgment and reject a proof for the judgment debt, in effect setting up the defence which the company could have set up in the action. The same would, I take it, be true of a judgment obtained by a creditor for a loan to the company of money which he knew to have been borrowed by the directors in excess of their powers; the liquidator could go behind the judgment if the issue that the borrowing was *ultra vires* the directors had not been contested.

Equally, a judgment obtained by compromise may well be open to review by a liquidator. It is not necessary to go so far as to say that the compromise was fraudulent; it is sufficient if it was unfair or unreasonable. In *Re Hawkins* [1895] 1 Q.B. 404, Lord Esher said this (at p. 409): "Where a judgment has been obtained by a compromise, the court has to say, looking at that compromise and all the facts which led up to it, whether in their opinion it is a just and proper compromise . . . The question for the court is whether there is, or is not, a reasonable doubt that the judgment had been obtained by one side or the other fairly. Was there a reasonable doubt at the time the compromise was made, and would the court, when it considers the whole matter, with the knowledge it then has, have agreed to that compromise? If the compromise is found to be a reasonable one the court will support the judgment; but if it is found not to be a reasonable compromise, although not fraudulent, then the court will not support the judgment . . . Though both parties to the compromise knew all the circumstances and agreed to it, yet if the court finds that it was foolish, absurd and improper, and one that ought not to have been made, they will not bind the whole body of creditors to that compromise. Still more, if the court finds that the compromise was made when one party knew all the circumstances and the other did not, then, even if there be no fraud, the compromise cannot be a fair one." See also *ex parte Banner*, 17 Ch. D. 480. It has been held, however, that where an action is ended by a compromise, the Bankruptcy Court will not go behind the compromise if it has been made by independent counsel and it is not impeached as fraudulent: see *In re a Debtor*, 13 B. & C. R. 34.

A Conveyancer's Diary.

Wills.—II.

HAVING limited life estates, protected or not, to the children, the draftsman must next consider whether the life tenants are to have access to capital for emergencies. The statutory power of advancement cannot, of course, be exercised in favour of persons not entitled to capital (see Trustee Act, s. 32). But circumstances may easily arise in which it is just that a life-tenant should be allowed some capital, perhaps on terms of taking out a life insurance policy to replace it. If the life-estate is absolute, of course, the life-tenant can sell part of it or mortgage it. But these expedients are not desirable and it is better to keep the whole matter within the control of the trustees. If the life-estate is determinable upon assignment, etc., such expedients are impossible, as to attempt any of them would cause a forfeiture. Again, it may well be a good thing that the trustees should be able to hand over all or part of the capital of a life-tenant's share to other trustees, e.g., those of his marriage settlement. Alternatively, it may often be thought desirable that the trustees should have power to hand over some capital absolutely to a child who has attained years of discretion. I suggest, therefore, the inclusion of some or all of the following clauses, or their equivalent:—

"3. My trustees shall have the following powers with regard to the capital of A's moiety during A's life whether or not his life interest in the income thereof has been forfeited;

"A. A power to transfer to A any sum or sums (not exceeding in the aggregate one-half in value of the sum of the value of A's moiety at the date of any particular transfer and the total amount of the sums already transferred under this power) for such reasons and upon such occasions as would have justified them in exercising the powers of advancement given by section 32 of the Trustee Act, 1925, if A had been contingently entitled to an absolute interest in A's moiety subject to no prior interest, and my trustees may make such terms as they think fit for the exercise of this power including the terms that the sum so transferred shall be made good to the capital of A's moiety upon his death by means of a policy of assurance upon A's life to be kept up by A, or failing him, by my trustees out of the income of A's moiety.

"B. A power to transfer the whole or any part or parts of the capital of A's moiety to the trustees of any other settlement under which A or any wife or issue of his take interests, such power however not to be exercised without the written consent of A.

"C. A power to declare in writing that the trusts of the income and capital of A's moiety or any part thereof shall cease to subsist and that the fund or sum in question shall

be held on trust for A absolutely, such power however only to be exercised after A has attained the age of thirty years and if my trustees shall state in writing that they are satisfied that he is of sufficient experience and discretion to justify such exercise."

The next matter to be considered is the destination of the capital of A's moiety after his death. Regard must be had to the rule against perpetuities. In a later article I shall hope to discuss ways of tying up the estate for a very long period, but at present I shall deal only with simple limitations. The capital will, of course, go to A's issue in the first place. If it is desired to provide for A's wife, he should be given power to appoint the income of his moiety to her for life. The interests of A's children should not be cut down by the will, but he should be left to appoint to them, if he wishes, such limited interests as the rule against perpetuities will allow. The testator can, of course, give to children of A, born in the testator's own lifetime, life interests with remainders to their children. But he cannot do so in respect of children of A born after the testator's death, and it seems rather unfair to give a smaller interest to a grandchild merely because he or she is older than his brothers and sisters. I think, therefore, that the best clause is the ordinary one, i.e., power to A to appoint a life interest to a surviving spouse, perhaps with provisions that such an interest must be on the same terms as A's own life interest; power to A to appoint among A's issue, trust in default of appointment for A's children at twenty-one or earlier marriage. On failure or determination of all these trusts, A's moiety should be made to sink into B's moiety if the trusts of that are still subsisting. In default, A should have a general testamentary power of appointment, and in default the estate should go as on the intestacy of the testator.

Finally, B's moiety should be dealt with referentially, in some such form as the following: "My trustees shall hold B's moiety upon the same trusts as are hereinbefore declared of A's moiety with the substitution of A's name for B's name and B's name for A's name wherever the same occur and any consequential changes of gender," assuming that B is a daughter.

Returning now to the legal estate: it is in trustees on trust for sale, with the consequence that no person will become a tenant for life (or person having the powers of a tenant for life) within the Settled Land Act, 1925. Under the Law of Property Act, 1925, s. 28 (1), the trustees for sale will have all the powers of a tenant for life and of the settlement trustees. Under that subsection those powers have to be exercised subject to any consents made necessary by the will, though a purchaser is not concerned with more than two such consents (*ib.*, s. 26 (1)). An unlimited discretion to postpone sale is, of course, implied (*ib.*, s. 25). Under s. 26 (3) trustees for sale are to consult "the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale." But this subsection is confined to land. Its scope is very vague and obscure, but so far as it goes it operates as a check on the trustees. Accordingly, it will do no harm to provide that: "My trustees shall be bound by the provisions of subsection (3) of section 26 of the Law of Property Act 1925 in respect of such parts of my estate as do not consist of land in the same manner as they are thereby bound in respect of such parts thereof as consist of land."

In order to make a further check on the trustees it is possible to provide that they are not to sell save with the consent of any person for the time being interested in any part of the income of A's moiety or B's moiety for his or her life or until forfeiture. Care should be taken not to make necessary consents by persons entitled under the discretionary trusts, as that would add undue complications.

So far as the proceeds of sale arising under the trust for sale consist of proceeds of sale of land, the trustees have power to re-invest in land in England or Wales (s. 28 (1)), incorporating Settled Land Act, s. 73 (1) (xi) and 73 (2) by reference. But where the fund is mixed it is tiresome to be compelled to trace investments to see which was originally land, and it is better to authorise any part of the fund to be re-invested in land. Land so bought will, of course, be conveyed to the trustees on trust for sale (Law of Property Act, s. 32 (1)).

By s. 29 of the same Act trustees for sale of land are empowered revocably to delegate in writing their power of leasing, accepting surrenders of leases and of management, to any person of full age (not being merely an annuitant) for the time being entitled in possession to the rents and profits for his life or for any less period. It may often be found convenient to exercise this power.

It will also be convenient to permit any life-tenant to be provided with a free house as part of his life-estate, or for a house to be built for a life-tenant. The house can be bought under the ordinary powers to invest in land, given in the will or implied by statute as explained above. There is no statutory power to apply capital money for building a new residence, and a special power must therefore be inserted. A very complex statutory position exists regarding the application of capital money for repairs, which, of course, primarily fall on income. Again it is best to give the trustees an express power to expend capital on repairs, and leave its exercise to their good sense.

So long as the life tenant does not forfeit, he can simply be allowed to occupy the house, though it is best that he should have a proper lease under which he covenants to pay outgoings. Once he has forfeited, he can only occupy the house so long as the trustees choose to exercise their discretion in his favour, as the right of occupation is really part of the income subject to the discretionary trust. The trustees must be careful not to fetter their discretion. They should make any lease determinable by themselves on the occurrence of a forfeiture of the life-estate, and if the ex-life-tenant is allowed to stay in possession they should review their decision every few months.

The correspondent who suggested this series was concerned at the prospect that the testator's intentions may be liable to be defeated after his death by a deed of family arrangement. I know there are ways and means in some cases of defeating a testator's intentions, but I do not think they are very serious unless the will is badly drawn or is hopelessly unjust. There are, of course, occasional cases where one can get a private Act of Parliament which really operates as a new will. But such an expedient is a luxury for the very rich, and is not usually a practical danger. Again, if all the conceivable beneficiaries, vested or contingent, are ascertained and *sui juris*, the trust can be terminated. The smallest outstanding interest in a person unborn or not ascertained or not *sui juris* makes such a course impossible without the assistance of the court. The business of the draftsman is to prevent that state of affairs arising. Under the limitations which I have sketched, a deed of arrangement out of court would be impossible for many years. The court has power to vary the terms of wills, etc., under the Trustee Act, s. 57, but this power does not enable it to vary the beneficial interests. It can only alter the powers of management and administration. If a will is difficult to understand and proceedings are taken for its construction, those proceedings may be compromised with the leave of the court and the compromise may in effect alter the will, even if infants and unborn persons are involved. But the court will jealously guard such persons' interests. In any event, such an arrangement is only possible by way of compromise of a dispute about the meaning of the will. I do not see how the court could sanction an arrangement varying a will which was clearly expressed, and if infants or unascertained persons are involved, the court's sanction to any arrangement is essential.

Finally, of course, the court can alter a will which is hopelessly unduteous to "dependants" within the meaning of the Inheritance (Family Provision) Act, 1938. But such a will ought not to be made in the first instance.

The upshot is that so long as a will is intrinsically proper and is efficiently drawn, the testator's intentions can only be upset by arrangements made after his death if the draftsman allows a situation to arise in which all the conceivable beneficiaries are ascertained and *sui juris*.

(*To be continued.*)

Landlord and Tenant Notebook.

Landlord's Responsibility for Safety of Premises.

Of recent years the law regulating the duties of landlords towards strangers to the contracts of tenancy as regards the safety of the demised premises has been enriched by a number of authorities. Some of the decisions are at first sight not easy to reconcile, and in formulating propositions one has to exercise patience when establishing the *ratio decidendi* and to choose one's words with care. The recent case of *Wringe* v. *Cohen*, reported in *The Times* of 9th November, in which the Court of Appeal upheld the judgment of a county court (but gave leave to appeal to the House of Lords), confirms this.

If, examining the position from the point of view of the stranger, one were to give a short but unscientific account of some of the cases of the present century, the effect might indeed be bewildering. The narrative would be something like this. First, a Mrs. Cavalier falls through the floor of the house she lives in, which is let to her husband. The landlord, Mr. Pope, or his agent, knew the floor was out of repair and had promised to see to it, but had done nothing about it. Mrs. Pope's action fails. Next, a Mrs. Malone, wife of the manager of a company and a resident on premises let to that company, is injured by a falling iron bracket which had been fixed, but insecurely fixed, to support an insecure water tank. The premises were let to the company by a firm of law stationers, who themselves held them of a building society, and when Mrs. Malone and her husband had complained about the tank to the stationers, they had passed the complaint on to the society. The society had not undertaken to repair, but there was some suggestion that the insecurity of the tank was due to vibration caused by an engine used by them in a building next door, and at all events it was they who had the bracket fixed and they whom Mrs. Malone sued. Her claim also failed. More recently, the St. Anne's Well Brewery Company suffer the loss of an inn which is destroyed when the garden wall of a cottage next door collapses. They sue the landlord of the cottage and fail. Soon after which a Miss Wilchick, walking past a house with a friend, is injured by a falling shutter, one hinge of which had long been broken off; the landlords had not undertaken but had reserved a right to effect repairs; she sued both them and the tenant and recovered judgment against both. While in the recent case Mrs. Wringe owned a shop, the roof of which was damaged by the fall of part of the wall of adjoining premises, let by a landlord who admitted liability to repair, and so far her claim against him has succeeded.

Now when we examine the episodes in which the four ladies and one brewery company were concerned from the point of view of the law other than the law of gravity, we find that the distinctions to be drawn are indeed fine and that in order to reconcile the authorities it is necessary to reject a good deal of what was said by the way, even in the House of Lords. The first case was that of *Cavalier* v. *Pope* [1906] A.C. 428. The learned law lords who finally rejected the claim in that case undoubtedly made much of the fact that the plaintiff was not a party to any contract. But when it comes to deciding the effect of the alleged undertaking to repair, Lord Macnaghten and Lord Atkinson both mention the fact that the plaintiff was aware of the defect in the floor, while Lord James of Hereford referred only to the fact that the defendant was not in possession or control—"the actual possession by the plaintiffs seems to negative this constructive control," a factor which also was much relied upon by Lord Atkinson: "the power of control necessary to raise the duty, for a breach of which damages were recovered in the several cases to which we have been referred, implies something more than the right or liability to repair the premises. It implies the power and the right to admit people to the premises and to exclude people from them. But this power and this right belong to the tenant, not to the landlord, and the latter's contract to repair cannot transfer them to him."

Faced with this, counsel in *Malone* v. *Laskey* [1907] 2 K.B. 141 (C.A.) had to seek distinguishing features, and it was argued that the defendant in that case was guilty not of mere nonfeasance but of misfeasance; also that the insecure bracket, unlike the hole in the floor, was in the nature of a trap. But the absence of any interest in the premises was fatal to the plaintiff's claim in so far as it was based on nuisance, and as regards the claim for negligence, Gorell Barnes, L.J., referred to three facts when rejecting it. The first was that the defendants were not in possession, occupation or control of the premises, from which it followed that the plaintiff was not an invitee. The second was that at the time of the accident the defendants, who had employed, apparently, competent workmen, were not aware of the defect. The judgment reads as if either of these facts was a complete answer to the claim. The third fact was that there was no representation, or at the most but an innocent representation, that the premises were safe.

The defendants and successful appellants in *St. Anne's Well Brewery Co.* v. *Roberts* (1928), 44 T.L.R. 703 (C.A.), had been satisfied by an architect that the wall (which had stood for many centuries) was in a safe condition. The cottage premises of which it formed part was let on a weekly tenancy at 4s. 3d. a week, without any express covenant to repair by either party. Scrutton, L.J., said "the person liable for a nuisance on premises is surely the occupier," adding that he would not, however, be liable at all unless he not either created or knew of, or ought to have known of the nuisance and allowed it to continue. Lawrence, L.J., said: "Any bargain made by the person responsible to his neighbour or to the public that another person should perform that obligation may give rise to rights as between those two contracting parties, but does not, in my judgment, in any way affect the rights of a third party, who is not party or privy to the contract."

But in *Wilchick* v. *Marks* [1934] 2 K.B. 56 the plaintiff succeeded against the defendant landlord because the latter had reserved a right to effect repairs and thus had sufficient control to oblige them to prevent injury. Goddard, J., applied a principle expressed more than a century earlier in *Laugher* v. *Pointer* (1826), 5 B. & C. 547, when Abbott, C.J., said: "I have the control and management of all that belongs to my land or my house, and it is my fault that if I do not so exercise my authority as to prevent injury to another." Further, it is important to note that on the issue whether the defendant was aware of the defect, the learned judge found that he had no knowledge, but considered this immaterial. Also, that his lordship observed that if the plaintiff had been not a passer-by but a visitor, she would have had no cause of action against the landlords, who owed no duty to the tenant and could owe no duty to visitor.

It will now be seen that some of the judicial utterances conflict. Taking the following considerations: status of plaintiff (neighbour, passer-by, invitee, etc.); terms of tenancy granted by defendant; and knowledge of defendant,

we see that the decision in *Cavalier* v. *Pope*, if and in so far as it was based on the proposition that possession by a tenant negatives duty on the landlord, this, while accepted by Scrutton, L.J., in *St. Anne's Well Brewery Co.* v. *Roberts*, was not followed in *Wilchick* v. *Marks*. Then the landlord's ignorance of the dangerous condition of the premises, which was stressed in *Malone* v. *Laskey* and in *St. Anne's Well Brewery Co.* v. *Roberts*, was considered immaterial in *Wilchick* v. *Marks*. Reconciliation can, however, be effected by referring the landlords' victories in *Cavalier* v. *Pope* and *Malone* v. *Laskey* solely to the plaintiffs' lack of status, and in *St. Anne's Well Brewery Co.* v. *Roberts* solely to the defendants' lack of control (omitting the factor of ignorance).

Now, in *Wringe* v. *Cohen*, the defendant landlord admitted control obtained via a covenant to repair, but relied on ignorance of the defect. The Court of Appeal have considered that the observations of Scrutton, L.J., in *St. Anne's Well Brewery Co.* v. *Roberts* do not apply, and have also referred to the older case of *Tarry* v. *Ashton* (1876), 1 Q.B.D. 314, saying that the judges in that case appeared to have taken the view that the duty on those who controlled property was absolute. Quain, J., and Lush, J., did hold that there was a duty on one who maintained a lamp projecting from his premises to keep it safe as regards persons using the highway; but Blackburn, J., expressed doubt whether either a latent defect or something done to the premises without the knowledge of the owner or occupier by a wrongdoer "such as digging out the coals underneath and so leaving a house near the highway in a dangerous condition" would not afford a valid defence. Since then the Court of Appeal have laid it down, in *Barker* v. *Herbert* [1911] 2 K.B. 633 (C.A.), that—in the words of Farwell, L.J.—"a landowner is not liable for a nuisance caused, not by his own action, but by something done by another person against his will, subject to the qualification that he may become liable if he permits it to continue and fails to abate it within a reasonable time after it has come, or ought to have come, to his knowledge." It will be seen that the "or ought to have come" may well put the landlord who merely reserves the right to repair in a worse position than him who covenants to repair, for the former can be more plausibly said to retain control, and thus to permit continuance.

Our County Court Letter.

THE CONTRACTS OF SHIPS' OFFICERS.

In *Sorenson* v. *The Edwardian Steamship Co., Ltd.*, recently heard at Cardiff County Court, the claim was for £68, being three months' salary in lieu of notice, or, alternatively, as damages for wrongful dismissal. The plaintiff's case was that in November, 1936, he was engaged as chief officer of the s.s. "Leo Dawson" at a salary of £19 5s. a month. This was subsequently increased to £22 15s. The plaintiff continued in the employ of the defendants until the 17th January, 1939, when the vessel arrived home from America. In consequence of complaints about the food the plaintiff and other officers declined to sign off the articles. The marine superintendent of the defendants ultimately stated that the services of the plaintiff would be dispensed with. The plaintiff accordingly claimed the above amount, on the ground that it was an implied term of his employment that it should only be terminated by reasonable notice on either side. The defendants' case was that the plaintiff was engaged on a voyage contract, which had come to an end. Alternatively, the complaints about the food were ill-founded, and, as the plaintiff refused to sign off unless he was paid an allowance for bad food, the defendants were entitled to dismiss him without notice. His Honour Judge Thomas found that the food was not reasonably satisfactory and that the plaintiff had a genuine grievance. The plaintiff had no contract in writing, but the evidence was that it was not a voyage contract. The plaintiff's pay commenced before he entered on any specific duty in connection with the ship, and it was customary for the officers to stand by, to superintend the discharge, and also to hold themselves in readiness for the next voyage, should there be one. As the officers were also paid wages in port, they were not under a voyage contract. The plaintiff had therefore made out his case, but reasonable notice was one month, not three. Judgment was given for the plaintiff for £22 15s., with costs on Scale B. See further *Edmondson* v. *Ropner* (1935), 79 Sol. J. 777, in which the shipowners were successful.

WALKING POSSESSION.

In a recent case at Stourbridge County Court a defendant was summoned by the Registrar to show cause why he should not be committed to prison for contempt of court. On the 14th June two executions (for £44 and £6) were levied, whereupon the defendant signed a walking possession order. This included an undertaking not to remove any goods from the premises, and to give free entry to the bailiffs. Nevertheless it was discovered, on the 30th June, that certain property had been removed, viz., a wooden shed, a ladder and some ironmongery. The defendant admitted having sold the shed for £2 12s. 6d., and the ironmongery for £5 10s. He had since satisfied both executions, including the costs. The defendant pleaded ignorance of the effect of the undertaking signed by him. His Honour Judge Roope Reeve, K.C., observed that the defendant (to whom the order for walking possession had been read over and explained) must have known that it was a concession, to save the cost of removal, and also inconvenience to the defendant. The defendant was accordingly ordered to be detained within the precincts of the court for two hours. It is to be noted that, if there is no breach of an undertaking, the penalty for rescuing goods seized is a fine not exceeding £5, under the County Courts Act, 1934, s. 124. An agreement for walking possession may also be entered into by a tenant whose landlord has levied a distress for arrears of rent. The law on this aspect of the subject was considered by the Court of Appeal in *Day* v. *Davies* [1938] 2 K.B. 74.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

THE DEFINITION OF A WORKMAN.

In *Dumbleton* v. *John Martin & Sons*, at Rugby County Court, the applicant's case was that he had been employed by the respondents to replace slates on the roof of a farm building. The agreement was that the applicant should be paid the usual rate, i.e., 1s. 3d. per hour, and he began work on the 14th January, providing his own "duck" ladder. The latter slipped, owing to its springing away from the ridge-tile of the granary. The applicant was thereby thrown to the ground and sustained an injury to the hip joint, causing a permanent limp. An award was, therefore, claimed of 30s. a week from the above date. It was submitted that the respondents exercised control over the applicant, who was a temporary workman. The respondents' case was that the applicant was not their servant and was not paid by the hour. It was expected that the applicant would send in his bill in due course, and this was the procedure adopted by the man who finished the work. His Honour Judge Donald Hurst held that the applicant had entered into a contract for services and not a contract of service. No award was therefore made, and the applicant was ordered to pay the costs.

In *Johns* v. *Chappell & Walton*, at Torrington County Court, the applicant was engaged to fell timber, and he and his brother were to receive 50s. each per week, and a settling-up at the end of the month. They were engaged as piece-workers at 10s. per hundred cubic feet. On the 3rd February, the applicant was chopping some timber, when by some accident his foot and the axe were driven into the ground. In an

operation a big toe and part of the next toe were amputated. The applicant's insurance card was stamped by the respondents and one partner in the firm gave directions as to the cutting of the timber. The respondents expressed surprise when their insurance company contended that the applicant was an independent contractor and not a workman. The case for the respondents was that the stamping of the insurance cards was not conclusive. The applicant was not under the control of the respondents as he was not timed at work and could come and go, or stay away, as and when he liked. The accounts were sent in under the bill-heads: "F. & S. Johns, Huish," and "Johns & Co." His Honour Judge Thesiger observed that, provided the work was done by the 25th March, the applicant and his brother were not bound to work on any particular day or at any particular hour. The weekly payment and the stamping of cards was not conclusive. The absence of any agreement as to the actual remuneration was inconsistent with a contract of service. The belief of the respondents that the applicant was a workman was not conclusive, if the evidence pointed to a contract for services and not a contract of service. The onus was upon the applicant to prove that he was a workman. Having failed to discharge that onus, the applicant was not entitled to an award. An order was made in favour of the respondents for costs on Scale B.

LUMP SUM FOR LUNG INJURY.

In *Revell* v. *E. Knowles, Ltd.*, at Faversham County Court, the applicant had been picking cherries in August, 1938, and had sustained a fracture of two ribs and penetration of a lung. He was in hospital until the 25th September, and, although the lung was cured, the applicant still suffered from giddiness and disturbed sleep, was unable to bend without pain, and had developed a bad cough. Only the lightest manual work was now open to the applicant, who proposed to become a vendor of wood and periodicals. His Honour Judge Clements ordered an agreement to be recorded for the payment of £200 in settlement.

Reviews.

Law in the Light of History. Book I.—Western Europe in the Middle Ages. By C. H. S. Stephenson, LL.D., and E. A. Marples. 1939. Demy 8vo. pp. xi and (with Index 331). London: Williams & Norgate, Ltd. 16s. net.

Those who liked to regard the general lay-out of the map of Europe as fixed and settled to-day, to-morrow and for ever in terms of national units have been taken aback during the last few years by the unexpected difficulties of maintaining the sanctity of frontiers. They forget the environment in which the European family grew up, the forces which gave it unity, the long antagonisms which tended to disrupt it from within, the enemies who constantly assailed it from without. For that reason such a work as this has an important function to perform. In short paragraphs, tersely headed, this first volume traces the history of Western Europe starting with the Gothic invasions of the Roman Empire at the end of the fourth century and breaking off abruptly with the death of Charles VIII of France at the end of the fifteenth. The very limitation of the book in point of space—it is just over 300 pages long—gives one a vivid sense of the ebb and flow of the tides of conquest and reconquest over the face of the Continent, of the groupings and regroupings of peoples, of races emerging into domination and merging again into obscurity, interweaving like the threads of a tapestry. This not only links up the developments of English history with corresponding movements on the Continent. It also helps one to see the present upheaval in its proper proportion and perspective. A considerable part of this book is devoted to tracing the outlines of the various legal systems which arose from the fluctuations and readjustments produced by conquest, emergency and racial fusion.

In the execution of their idea the authors have made excellent use of their strictly limited space, though a few more sketch maps would have been invaluable in clarifying their complicated story. (On the two maps provided one seeks in vain for such vanished kingdoms as Ripuaria.) Much that is debatable is of necessity left undebated, some personalities are given rather less than the benefit of any doubt in their favour, and some statements are made too broadly. Thus, it may be worth pointing out, since this is a book partly legal, that in touching on the termination of the union of Louis VII of France and Eleanor of Aquitaine the popular word "divorce" is used, though the term does not really cover a decree of nullity on the ground of consanguinity—however strongly one may suspect collusion in the suit. Still, in the face of immense difficulties involved in the compression of so vast a subject the authors have produced a really valuable synopsis both legal and historical.

Books Received.

The Solicitors' Diary, Almanac and Legal Directory for 1940. Edited by R. W. D. Sandford, B.A., Solicitor. Ninety-sixth year of publication. 1939. London: Waterlow and Sons, Ltd. Prices from 8s. to 15s. net.

The Lawyer's Companion and Diary for 1940. Ninety-fourth annual issue. Edited by Morton F. Parish, Member of The Law Society. 1939. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd. Prices from 5s. to 14s. 6d. net.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Nationality and Naturalisation.

Sir,—In reading the current issue of The Solicitors' Journal (dated 2nd December) we have noticed what we think may well prove to be an important omission on p. 897 in the paragraph entitled "Nationality and Naturalisation." It is there stated that the Home Secretary has decided to re-invest with British nationality British-born wives of aliens [and it is assumed, in view of the remainder of the paragraph, that the decision referred to relates to British-born wives of *enemy* aliens] who are in this country and in sympathy with our aims during the present struggle. This is true; but it is not sufficient that the alien should be both in this country and in sympathy with British aims in order that his wife may qualify for naturalisation under s. 10 (6) of the British Nationality and Status of Aliens Act, 1914 (as substituted by the 1933 Act). It is a condition precedent to any such application that, in addition to the two qualifications you mention, the alien (or, more strictly, the enemy alien) should be exempt from the special restrictions applicable to enemy aliens. This latter, we take it, presupposes that he shall have appeared before his local tribunal. We have a case in this office—and no doubt there are many others—where the two conditions you mention are fulfilled, but the third is not: where, for instance, the enemy alien is still restricted so far as the 5-mile limit is concerned. We are advised by the Naturalisation Branch of the Home Office that an application for naturalisation by the British-born wife of an enemy alien in such circumstances will not be accepted.

D. L. H. Price.

(Lewin, Gregory, Torr, Durnford & Co.)

Westminster, S.W.1.

5th December.

[We thank our correspondent for the clear explanation of the limitations which may not have been made sufficiently clear in our Topic.—Ed., *Sol. J.*]

To-day and Yesterday.

LEGAL CALENDAR.

4 DECEMBER.—On the 4th December, 1856, Guiseppe Legava, Giovanna Barbalano and Matteo Pettrich, three Italian seamen, were tried at Winchester Assizes for piracy and murder on board the merchant ship "Globe." One night while the vessel was on a voyage in the eastern Mediterranean, they and other foreigners in the crew had seized it by force, killing one English sailor, wounding others and confining the master and the mate. After taking all the valuables they could they had made off in the ship's boat. They had been arrested near the Bosphorus by a naval party, and a jury of five foreigners and seven Englishmen now found them guilty. They afterwards confessed their guilt, but the dramatic vociferations, expressive of penitence, which they uttered on the scaffold, were mistaken by the crowd for protestations of innocence.

5 DECEMBER.—On the 5th December, 1785, John Smith, a Guardsman turned housebreaker, was condemned to death, but he was not destined to die, for after he had hung at Tyburn for a quarter of an hour a reprieve arrived and on his being cut down he was found susceptible of revival. Not long afterwards he was again tried at the Old Bailey on a capital charge, but the judges decided a technical point in his favour. A third time he was indicted, but the prosecutor having died the day before the trial was to have come on he went free again and vanished from history.

6 DECEMBER.—On the 6th December, 1777, the Justices at the Westminster Guildhall had a body-snatching case before them when two gravediggers, attached to St. George's Church, Bloomsbury, were tried for stealing the corpse of a lady lately buried there. They were both convicted and sentenced to six months' imprisonment and two whippings each, but the latter part of the punishment was respited.

7 DECEMBER.—On the 7th December, 1680, Viscount Stafford was condemned to death during the great scare over the bogus "Popish Plot." The eighty-six peers voted, thirty-one "Not Guilty" of treason and fifty-five "Guilty." The Lord High Steward pronounced sentence for the usual butchery "with great solemnity and dreadful gravity and, after a short pause, told the prisoner that he believed the Lords would intercede for the omission of some circumstances of his sentence, beheading only excepted." The prisoner "gave their lordships thanks after the sentence was pronounced and indeed behaved himself modestly and as became him."

8 DECEMBER.—Even policemen are not impeccable. In 1879 Paris was shocked to find that the villain of the gruesome crime in the Rue du Gué had had twenty-four years' exemplary service in the army and the police. His name was Prevost. First a human arm had been found on the ground, then other human remains in the gutter. The victim was identified as a hawker of jewellery. It turned out that Prevost had invited him home for a drink of wine and just at the moment that they were clinking their glasses had killed him with a blow from a hammer. He had then dismembered the body to dispose of it piecemeal. His booty was worth 250 francs. On the 8th December he was condemned to death at Paris.

9 DECEMBER.—Some of the old methods of paying the judges were calculated to give them an interest in their work. Thus the Earl of Strafford, writing to the King from Ireland, on the 9th December, 1636, said: "Your Majesty was graciously pleased upon my humble advice, to bestow four shillings in the pound upon your Lord Chief Justice and Lord Chief Baron in this Kingdom from the first yearly rent raised upon the commission of defective titles which upon observation I find to be the best given that ever was. For now they do intend it with a care and diligence such as if it were their own private and most certain gaining."

10 DECEMBER.—On the 10th December, 1674, Chief Justice Vaughan died suddenly at his chambers in Serjeants' Inn.

THE WEEK'S PERSONALITY.

Of John Vaughan, Lord Chancellor Clarendon wrote that he "was in truth a man of great parts of nature and very well adorned by arts and books" but "he was of so magisterial and supercilious a humour, so proud and insolent a behaviour" that nothing could "file off that roughness." It seems "he looked most into those parts of the law which disposed him to least reverence to the Crown and most to popular authority, yet without inclination to any change in government and, therefore, before the beginning of the Civil War and when he clearly discerned the approaches to it he withdrew himself into the fastnesses of his own country, North Wales, where he enjoyed a secure and as near an innocent life as the iniquity of that time would permit and upon the return of King Charles II he appeared under the character of a man who had preserved his loyalty entire and was esteemed accordingly by all that party." In 1668, he became Chief Justice of the Common Pleas. His roughness did not spare his brethren. Once, when a point of ecclesiastical law had arisen and two of the judges had remarked rather complacently that they knew nothing of it, he exclaimed: "Good God! What sin have I committed that I should sit on this bench between two judges who boast in open court of their ignorance of the canon law."

NO CHEWING IN COURT.

Mr. Harris recently upheld the decorum of the proceedings at Marlborough Street Police Court by ordering the ejection of a youth who was chewing gum. "Nobody is allowed to chew gum in this court," he declared. "If anybody else is chewing gum he had better go outside." To the best of my knowledge, information and belief that is the first time that this particular offence against the dignity of judicial officers has been publicly denounced. Wearing or not wearing a hat, according to the sex of the offender, has been a fruitful source of comment. Spitting, too, has been explicitly discouraged. In the case of each, Ireland has produced remarks which could not be bettered. "I see you standing there like a wild beast with your hat on," exclaimed Mr. Justice Mayne once to a man who had forgotten to uncover himself in a Dublin court. Then there was the judge who ordered out someone who had expectorated in his presence. "You've got the whole of the County of Kerry to spit in without coming into my court," he said. Even smiling may be taken amiss. At Bodmin there used to live an old man whose face was permanently distorted in a ghastly grin. Once, after there had been some unseemly laughter in the Assize Court, Mr. Justice Denman caught sight of him and called out angrily: "You wicked old man; I'll send you to prison." Of course his expression did not change and eventually he was ejected, still apparently grinning.

NEWSPAPERS FORBIDDEN.

Newspaper reading in court is actively discouraged. It was a practice which used to cause the late Mr. Justice Swift particular annoyance. Once at Birmingham he startled a counsel engaged in an abstruse legal argument by suddenly inquiring whether there was a public library in that city. On receiving an affirmative reply the judge then asked whether it was close at hand and was told that it was quite near. "Then," he said, "that is a more convenient place for reading the newspaper than my court. Let that man at the back go there." The man went out immediately.

Notes of Cases.

Judicial Committee of the Privy Council.

Pioneer Laundry and Dry Cleaners, Ltd. *v.* The Minister of National Revenue.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Wright and Lord Romer. 13th October, 1939.

CANADA—INCOME TAX—CLAIM IN RESPECT OF DEPRECIATION OF MACHINERY—MINISTER'S DISCRETION—QUASI-JUDICIAL FUNCTION—R.S.C., c. 97, ss. 5, 6.

Appeal from a decision of the Supreme Court of Canada (Crocket, Kerwin and Hudson, JJ.; the Chief Justice and Davis, J., dissenting), affirming a decision of the Exchequer Court, which upheld a decision of the respondent Minister.

In making a return of income for the year ending the 31st March, 1933, the appellant company claimed deduction for depreciation of certain machinery and equipment. The Minister disallowed the deductions, and the courts in Canada upheld that decision, the company now appealing. The appellants were incorporated on the 23rd March, 1932, and acquired the machinery and equipment in question from H.S. Co., Ltd., which was incorporated on the same date. H.S. Co., Ltd., on the 1st April, 1932, acquired all the physical assets of seven companies, including P.L.D.C., Ltd., which had previously gone into liquidation, and from which it acquired the machinery and equipment. At that time all the share capital of the seven companies was, with certain exceptions, held by P.I.C., Ltd., which went into voluntary liquidation on the 7th April, 1932. The machinery and equipment were fully written off by depreciation while owned by P.L.D.C., Ltd. In return for the assets of the seven companies transferred to H.S. Co., Ltd., practically all the share capital of H.S. Co., Ltd., was transferred to the liquidators of those companies, and then distributed to P.I.C., Ltd., and, on the winding up of that company, to its own shareholders. The admitted result of these transactions was that the holdings of the shareholders in the appellant company were substantially the same as their respective holdings in the old P.L.D.C., Ltd. The discretion in the Minister with regard to allowances for depreciation is regulated by the Income War Tax Act, 1927. By s. 5 "'Income' . . . shall . . . be subject to the following . . . deductions—(*a*) Such reasonable amount as the Minister, in his discretion, may allow for depreciation . . ." By s. 6: "In computing . . . profits . . . a deduction shall not be allowed in respect of . . . (*b*) . . . any payment on account of capital or any depreciation . . . except as otherwise provided by this Act. (*Cur. adv. vult.*)

LORD THANKERTON, giving the judgment of the Board, said that the Board were unable to agree with the view of the majority of the Supreme Court that Parliament intended that there should be no depreciation allowance unless the Minister, in his sole discretion, decided that there should be; that there was nothing to indicate the principle on which depreciation allowance was to be ascertained, and nothing in the Act which denied the Minister the right to look beyond the legal façade in order to ascertain the realities of ownership or the possibilities of schemes to avoid taxation; and that the Minister alone was intended to be able to estimate those different factors properly. Their lordships agreed with Davis, J.'s, view that the appellants were entitled to deduction in such reasonable amount as the Minister in his discretion might allow for depreciation, and that that involved an administrative duty of a quasi-judicial character, and a discretion to be exercised on proper legal principles. The taxpayer had a statutory right to an allowance for depreciation, and the Minister had a duty to fix a reasonable amount in respect of it. The Minister in his decision stated that he disallowed the claims on the ground that there was "no actual change in ownership of the assets purchased . . . from P.I.C., Ltd., by H.S.C., Ltd. . . . and set up in the books of the" appellant company "at appreciated values." The reason there given for the decision was not a proper ground for the exercise of the Minister's discretion. He was not entitled, in the absence of improper conduct, to disregard the separate legal existence of the appellant company and inquire who were its shareholders and what was the company's relationship to its predecessors. The appeal must be allowed.

COUNSEL: *Martin Griffin*, K.C.; *F. P. Varcoe*, K.C., and *F. Gahan*.

SOLICITORS: *William A. Crump & Son; Charles Russell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

R. *v.* Recorder of Bolton; *Ex parte* McVittie.

Scott, Clauson and Goddard, L.JJ.
10th November, 1939.

LOCAL GOVERNMENT—RUINOUS STRUCTURE—"DETRIMENTAL TO AMENITIES"—ORDER TO REPAIR OR DEMOLISH—WORKS REQUIRED NOT SPECIFIED—WHETHER ORDER VALID—PUBLIC HEALTH ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), s. 58 (1).

Appeal from the King's Bench Division.

In 1930 a picture theatre was destroyed by fire, the site being left derelict with several steel poles or stanchions still standing. On the 1st October, 1937, the Public Health Act, 1936, came into force. In December, 1937, a court of summary jurisdiction made an order under s. 58 (1) of the Act ordering the owner "to execute such works of repair or restoration or, if he so elected, to take such steps by demolishing the structure . . . as may be necessary for removing the cause of complaint" that it was seriously detrimental to the amenities of the neighbourhood. The order did not specify the works to be executed. The order was confirmed by quarter sessions. The Divisional Court held that the order was valid.

SCOTT, L.J., dismissing the owner's appeal, said that it had been argued that s. 58 should be interpreted as requiring the local authority to specify the precise works required, and that as the order did not do so it was bad. The owner had relied on ss. 93 and 94 dealing with nuisance, but the interpretation of s. 58 should not be cut down by reason of decisions on a wholly different type of section.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Montgomery*, K.C., and *James Stansfield*; *Gorman*, K.C., and *William Morris*.

SOLICITORS: *Peacock & Goddard*, for *Percy H. Baker & Co.*, of Manchester; *Simmons & Simmons*, for the *Town Clerk*, Bolton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Wringe *v.* Cohen.

Slesser and Luxmoore, L.JJ., and Atkinson, J.
8th November, 1939.

NUISANCE—PREMISES OCCUPIED BY TENANT—LANDLORD LIABLE TO REPAIR—DISREPAIR—FALL OF WALL DAMAGING NEIGHBOURING PREMISES—LIABILITY.

Appeal from Sheffield County Court.

Premises owned by the defendant had been for two years occupied by a tenant who was under no obligation to repair them, the defendant being liable for repairs. There was evidence that at the material time the wall at the gable end of the house was bulging, the pointing being bad and the collaring perished and that its condition had been defective for three years. On the 24th November, 1938, the top of the

wall fell during a high wind and damaged neighbouring premises belonging to the plaintiff. His Honour Judge Essenhigh held that the wall had become a nuisance and that the defendant was under an absolute duty to the plaintiff to keep it in such repair as not to become a nuisance.

ATKINSON, J., delivering the court's judgment dismissing the appeal, said that when through want of repair premises on a highway became dangerous and a nuisance, and a passer-by or an adjoining owner suffered damage by their collapse, the occupier or owner, if he had undertaken the duty of repair, was liable whether or not he knew or should have known of the danger. The undertaking to repair gave him control of the premises and a right of access for the purpose of keeping them in a safe condition. If, however, the nuisance was not caused by want of repair but by the act of a trespasser or the forces of nature (e.g., subsidence) the owner was not liable. It was an offence at common law to allow premises adjoining a highway to fall into disrepair. There was an absolute duty to prevent them from becoming a nuisance (*Tarry* v. *Ashton*, 1 Q.B.D. 314). The observations of Scrutton, L.J., in *St. Anne's Well Brewery Co.* v. *Roberts*, 140 L.T. 1, should be interpreted with reference to the facts of that case. The appeal was dismissed with costs.

COUNSEL: *Monier-Williams*; *Denis Robson* (for *Alastair Sharp*).

SOLICITORS: *Hyman Stone, Saffer & Co.*, of Sheffield; *Irwin Mitchell, Kershaw & Co.*, of Sheffield.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re a Debtor; *Ex parte* Dunn Trust, Ltd.

Farwell and Morton, JJ. 9th November, 1939.

JUDGMENT—ACTION ON PROMISSORY NOTE—AMOUNT OF HIGH COURT JUDGMENT NOT PAID—LEAVE GIVEN IN HIGH COURT TO PROCEED TO ENFORCEMENT—BANKRUPTCY PETITION IN COUNTY COURT—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (1)—COURTS (EMERGENCY POWERS) RULES, 1939 (S.R. & O., 1939, No. 995/L.14), r. 2.

Appeal from Oxford County Court.

In June, 1939, the applicants began an action against the debtor in the High Court to recover £100 and interest due on a promissory note. On a summons under Ord. XIV they recovered judgment for the amount of the principal, but, this judgment not having been satisfied, they served a bankruptcy notice on the debtor on the 19th August. After war broke out they applied in the High Court under the Courts (Emergency Powers) Act, 1939, for leave "to proceed to execution on, or otherwise to the enforcement of" the judgment. Leave was given on the 23rd September. On the 3rd November they presented a bankruptcy petition to the Registrar of the Oxford County Court. He refused to file it on the ground that leave to enforce the judgment had not been obtained in that court. This was an application *ex parte* for a direction that the petition should be filed by the Registrar.

MORTON, J., delivering the court's judgment allowing the application, said that the applicants were proceeding "to execution on, or otherwise to the enforcement of" a judgment within s. 1 (1) of the Act. Under the Courts (Emergency Powers) Rules, 1939, r. 2, the appropriate court to give leave was that "by which the judgment or order has been given or made." The case was within r. 2.

FARWELL, J., said that a person to whom leave had been given could take all proper steps to enforce the judgment in any court and was in the same position as if the Act had not been passed.

COUNSEL: *C. Salmon.*

SOLICITORS: *Woolfe & Woolfe.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Ellinger *v.* Guiness, Mahon & Co., Frankfurter Bank A.-G. and Mettall Gesellschaft A.-G.

Morton, J. 28th July and 6th October, 1939.

PRACTICE—ACTION AGAINST DEFENDANT WITHIN JURISDICTION—LEAVE TO SERVE NOTICE OF WRIT ON DEFENDANTS OUT OF JURISDICTION—COURT'S DISCRETION—EXERCISE—R.S.C. ORD. XI, r. 1 (9).

The plaintiff, a Jew, originally a German subject, left Germany, becoming permanently resident in England, in 1936, and a naturalised British subject in July, 1939. In 1927 the first defendants, an English bank, executed a deed of covenant, reciting that they had entered into an agreement whereby 15,000,000 gold marks, nominal amount of 6½ per cent. gold mortgage bonds of a Bavarian bank were to be issued in Germany to them or to their agents there and deposited by them with the Royal Bank of Scotland or its agents in Germany. The English bank covenanted with the persons registered in a register to be kept in London, and with all other persons entitled, pursuant to the provisions of the agreement or by any act of law to enforce the interests of the persons registered, to observe the provisions of the agreement. By cl. 2 the English bank were to receive all payments in respect of the bonds and to endeavour to obtain prompt payment, but were not to be obliged to take proceedings to enforce payment. By cl. 3 every sum received by them as owners of the bonds was to be distributed by them among the persons entered on the register. By cl. 4 every payment was to be made in sterling, but registered holders might require payment in German currency. In 1932 the plaintiff bought 20,000 gold marks nominal value of the bonds through the third defendants, a German bank, whose general terms of business governed the transaction. By these, unless otherwise agreed for individual transactions, their offices constituted the place of fulfilment for both parties; customers in their legal relations with them submitted to German law and the competency of the Courts of Frankfurt-on-Main, without prejudice to the bank to have recourse to another legally admissible court; the bank might alter or amend their terms of business at any time, such amendment or supplement cancelling previous arrangements in conflict therewith and being deemed to have been approved unless customers raised opposition within a time set out or if business relationship continued without opposition; declarations of a customer in conflict with the general terms of business were not to bind the bank. A scrip certificate was issued by the English bank and was held by the second defendants, a German Frankfurt bank (who were entered on the register as holders) as bankers for the German bank. The interest was thereafter received by the German bank and credited to the plaintiff. In 1936 the plaintiff, owing to the German political situation, was deprived of his employment and emigrated. Part of his securities were released on his signing a document in July, 1937, agreeing that certain named securities (including those now in question) should be subject "to all embargoes and restrictions which exist or may be issued for similar securities in the possession of a national." He undertook to assign the securities to the Deutsche Golddiskontbank for sale for his account abroad, the reichmark value of the proceeds being credited to him in the Emigrants Blocked Account. He was thus unable to deal with the securities. By an alteration in their terms of business made by the German bank in December, 1937, their offices at which an account was kept was declared the place of fulfilment for both parties and German law was declared applicable to all legal relations between a customer and the bank even where an action was conducted abroad. It was laid down that the bank could only be sued before a court at the place of fulfilment. In April, 1939, the plaintiff issued a writ, claiming against the English bank a declaration that he was entitled to be registered

as holder of the interest in the securities and to be issued with a certificate in respect of it. As against the German Frankfurt bank he claimed a declaration that he was entitled to the certificate, an order that they should transfer the interest in the securities to him and an injunction restraining them from dealing with the certificate registered in their name with the English bank till a certificate was issued to him. As against the German bank he claimed a declaration that they held or were entitled to the certificate as agents for him, and an order that they should transfer to him the interest in the securities. In April, 1938, leave was given *ex parte* to the plaintiff to serve notice of the writ on the defendants out of the jurisdiction under R.S.C. Ord. XI, r. 1 (9). In June they entered conditional appearance. They now moved that the order should be discharged and the proceedings against them set aside. There was uncontradicted evidence that if the plaintiff went to Germany to pursue legal remedies he would be in grave danger of imprisonment, and that in a case affecting German financial interests he would be unable to obtain justice.

MORTON, J., in a reserved judgment, said that in considering whether an action was "properly brought" against a party within the jurisdiction within Ord. XI, r. 1 (9), it was enough if the court were satisfied that there was a real issue between the plaintiff and that party which it might reasonably be asked to try. Further, the primary relief here claimed was against the English bank. *Rosler* v. *Hilbery* [1925] 1 Ch. 250, and *In re Schintz* [1926] Ch. 710, were distinguishable. It had been argued that the court's discretion to allow service out of the jurisdiction should not be exercised because there had been a submission to the exclusive jurisdiction of the German courts, but only the plaintiff claimed any beneficial interest in the securities and the submission to the jurisdiction of the German courts was only as between the plaintiff and the German bank. In the circumstances, the plaintiff should have the opportunity of having his action determined in England and the German defendants should have an opportunity of defending it. The judge trying the action would determine what relief should be given. His lordship was only deciding now that these parties should properly be served with notice of the writ. The argument based on some of the affidavits in the case that if there was non-disclosure of any material fact on an *ex parte* application, the order then made should be set aside even if the judge on being fully informed of the facts thought the case proper for service out of the jurisdiction, could not succeed. In the absence of an attempt to deceive the court, the judge would not take that course. The observations in *In re Schintz* [1926] Ch. 710, at pp. 716, 723, were *obiter*. The motion should be dismissed.

COUNSEL: *Andrew Clark; John Foster.*

SOLICITORS: *Mayo, Elder & Co.; Swann, Hardman & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Lee and Another *v.* Walkers and Another.

Wrottesley, J. 19th October, 1939.

NEGLIGENCE — MISCHIEVOUS DOG — DOG DISTURBED BY PLAINTIFF WHILE EATING—PLAINTIFF BITTEN—OWNER NOT LIABLE.

Action for damages for personal injuries.

The defendants were the owners of premises consisting of a fish shop and restaurant, which the infant plaintiff, a child of four and a half years, visited with his grandmother in September, 1938. While the grandmother was making her purchases in the shop, the boy went into the restaurant, where a dog belonging to the defendants was eating. The child's evidence was that he went into the restaurant because he wanted to have a look round; that he had been into the restaurant before; that there were no customers there; that he was looking for the dog because he wanted to play with it; that the dog was underneath a table, and that he went and patted it and tried to get it to come out to play; that the dog would not come because it wanted to eat its fish; that the dog finished the fish and that he kissed it and put his arm round it to get it to play, and that it then bit him. The grandmother admitted in evidence that the child had no business to go into the restaurant. There was evidence of knowledge in the defendants of the dog's propensity to bite. Counsel for the defendants, submitting that there was no case to answer, contended that, apart from the question of *scienter*, although the child might be a licensee or an invitee so far as the fish shop was concerned, when he went into another part of the premises where he had neither licence nor invitation to enter he became a trespasser; and that the defendants were not liable for the injury which he sustained. It was contended for the plaintiffs that there was an implied invitation to the boy to enter the room where he was injured, and that, if that were the case, he was an invitee and the duty cast on the owners of the premises in all the circumstances was not the normal duty owed by the occupier of premises to a licensee, but the higher duty of making the premises reasonably safe for a child.

WROTTESLEY, J., said that he must decide the case at that stage on the basis that the dog was known by the defendants to be likely to bite. He referred to *Sycamore* v. *Ley*, 147 L.T. 342, as containing a statement of the law relating to animals and particularly dogs. A person owning a dog known to be mischievous was answerable for any damage which it did, except that the person to whom injury was done must not have brought it on himself. In the present case the child had brought the accident on himself by what he had done. The accident was due, not to the fact of the dog's not being kept under control, but to the fact that it was interfered with. Had the dog been an animal of the mildest disposition it could not be expected to tolerate the treatment which, in ignorance, it received from the boy. It was also argued for the plaintiffs that the child was invited into the restaurant by the defendants, and that it was, therefore, their duty to take care that no harm came to him. In his (his lordship's) opinion, the child was not invited into the room, but strayed there. "It is permission that must be proved, not tolerance" (*per* Lord Dunedin, in *Robert Addie & Sons (Collieries), Ltd.* v. *Dumbreck* [1929] A.C. 358, at p. 373). The present case, even assuming it to be shown that the owners of the shop, or their representatives, knew that the child was in the room, was at the highest one of tolerance. The action failed.

COUNSEL: *P. L. E. Rawlins; Arthian Davies.*

SOLICITORS: *Humphrey Razzall & Co.; H. Wilfred Aldrich.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Barber and Another *v.* Clarke & Co., Ltd., and Others.

Wrottesley, J. 23rd October, 1939.

NEGLIGENCE—NUISANCE—GATE PRECARIOUSLY PROPPED UP ON LAND ADJOINING PUBLIC HIGHWAY—CHILD INJURED BY FALL OF GATE—LIABILITY.

Action for damages for negligence and nuisance.

While the infant plaintiff was walking along a public road he lawfully put his hand on a gate which, being precariously propped up, fell on his arm, breaking it. In respect of his injuries he sued Clarke & Co., Ltd., and the British Syphon Co., Ltd., as owners of the land adjoining the highway, on which land the gateway was, and one, Etherington, who had been instructed by the first defendants to build a fence between their plot and that of the second defendants. The boundary line which Etherington had to follow reached the road at a point just within the gateway, which was for the most part on the second defendants' land. Etherington had to remove the gate post in order to make room for the end post of the fence, the gateway otherwise remaining. While Etherington was building the fence, the gate was lying on the

ground by the gateway, but as it was in the way it was taken by his men and leant against the fence separating the highway from the second defendants' land. When Etherington had completed the fence, a director of the first defendants saw the gate lying on the ground and gave instructions for it to be replaced. The man so instructed did not replace the gate that day, and on the next day the accident occurred to the plaintiff, an unknown person having meanwhile placed the gate in the precarious position which caused the accident.

WROTTESLEY, J., said that there was no evidence that anyone who was a party to the action had by himself or an agent placed the gate in the dangerous position. The case against Etherington failed on the facts. The claim against the first defendants was based on the allegation that there was a dangerous state of affairs, of which they knew, and which they did nothing to remedy. It was also contended that it was their duty to see that no one was injured through any work which they undertook to do. The law was that if a man did work of a dangerous nature near a highway he was, undoubtedly, responsible for seeing that the public did not suffer. The law was clearly laid down in *Honeywill & Stein, Ltd.* v. *Larkin Bros. (London's Commercial Photographers), Ltd.* [1934] 1 K.B. 191. There was no duty on the second defendants to supervise the way in which Etherington did the work of erecting the fence. Neither in fact nor in law were they liable for the plaintiff's injuries. The case failed against Etherington *a fortiori*. In erecting a fence he was doing nothing which was dangerous to anyone. A loose gate was not a thing dangerous in itself, or one which it could be anticipated would become dangerous in the way in which this gate did. The decision in *Clark* v. *Chambers* (1878), 3 Q.B.D. 327, would not have been the same if the object in question had been, not a spiked barrier, but a gate in a field. The third defendants were, at any rate, the occupiers. It was argued that they were liable for a nuisance on their land unless they could prove that it had been placed there by a trespasser. Circumstances not unlike those of the present case had arisen in *Barker* v. *Herbert* [1911] 2 K.B. 633, and of those circumstances Vaughan Williams, L.J., said, at pp. 636 and 637: "there can be no liability upon the part of the possessor of land in such a case, unless it is shown either that he himself, or some person for whose action he is responsible, created that danger which constitutes a nuisance to the highway, or that he has neglected for an undue time, after he became, or . . . ought to have become, aware of it, to abate . . . the . . . nuisance." It was argued that the third defendants had not proved that a trespasser had propped the gate up precariously, and therefore that they were liable. But they did not know and could not have known that the gate was thus placed on the morning in question, and it was therefore unnecessary to decide whether the burden of proof in this case was on them. The action failed.

COUNSEL: *Gilbert Paull*, K.C., and *D. M. Rosenberg*, for the plaintiffs; *Holroyd Pearce*, for the first defendants; *Armstrong Jones*, for the second defendants; *Graham Swanwick*, for the third defendant.

SOLICITORS: *S. Rutter & Co.*; *Savage, Cooper & Wright*, Agents for *Wilson A. L. Houlder*, Southall; *Linklaters and Paines*, for *Reginald Johnson & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

HIS. HON. SIR ALFRED TOBIN, K.C.

His Honour Sir Alfred Aspinall Tobin, Judge of Westminster County Court from 1919 to 1935, died at Montreux on Thursday, 30th November, at the age of eighty-three. He was educated at Rugby and University College, Oxford, and was called to the Bar by the Middle Temple in 1880. In 1903 he took silk, and in 1904 was appointed Recorder of Salford. In 1915 he was appointed County Court Judge of the old Circuit 27 (Shropshire and Herefordshire, etc.) and held this position until 1919, when he was transferred to the Westminster County Court. During the same year he received the honour of knighthood. In 1931 he was Treasurer of the Middle Temple.

MR. C. F. C. LUXMOORE.

Mr. Charles Fairfax Coryndon Luxmoore, barrister-at-law, died on Thursday, 30th November, at the age of thirty-one. He was the elder son of The Rt. Hon. Lord Justice Luxmoore, and was called to the Bar by Lincoln's Inn in 1932.

MR. L. W. BYRNE.

Mr. Lucius Widdrington Byrne, barrister-at-law, and bencher of Lincoln's Inn, died on Thursday, 30th November. He was called to the Bar by Lincoln's Inn in 1899, and was the eldest son of the late Mr. Justice Byrne.

MR. T. J. SAMUEL.

Mr. Thomas John Samuel, O.B.E., solicitor, of Aberystwyth, has died at the age of seventy-five. He was admitted a solicitor in 1890, and was Mayor of Aberystwyth in 1911, when King George V and Queen Mary, accompanied by other members of the Royal Family, visited there to lay the foundation stone of the National Library of Wales.

MR. H. HUGHES.

Mr. Henry Hughes, solicitor, and for many years senior partner in the firm of Messrs. Hogan & Hughes, solicitors, of Martin Lane, Cannon Street, E.C.4, died on Saturday, 2nd December, in his ninetieth year. Mr. Hughes was admitted a solicitor in 1872.

MR. J. D. PRYCE.

Mr. John Davies Pryce, solicitor, senior partner in the firm of Messrs. Benson, Burdekin & Co., solicitors, of Church Street, Sheffield, died recently. Mr. Pryce was admitted a solicitor in 1881.

Societies.

Hampshire Incorporated Law Society.

The forty-eighth annual meeting of the Hampshire Incorporated Law Society was held at the Polygon Hotel, Southampton, on Friday, 24th November, Mr. G. H. King (Portsmouth), the retiring President, being in the chair.

The Hon. Treasurer presented the balance sheet, showing a balance in hand of £52 8s. 5d., as against £68 11s. 6d. brought forward from the previous year.

The Hon. Secretary presented the annual report, calling special attention to the position of poor persons' work, which still showed very serious arrears, which were not likely to decrease owing to the fact that many solicitors would be unable to undertake additional cases owing to depletion of staff.

The balance sheet and the report were duly adopted.

Mr. A. L. Bowker, Winchester, proposed the election of Mr. T. E. Brown, of Winchester, as President for the ensuing year. He assured the meeting that Mr. Brown was in every way, not only in his legal life but his outdoor life, a thorough sportsman and that he would worthily hold the office of President for the ensuing year.

Mr. H. White, of Winchester, seconded the nomination and informed the meeting that on the previous day Mr. Brown had been appointed Registrar of the Winchester County Court. The new President, having been duly invested by the retiring President, suitably returned thanks and proposed a vote of thanks to Mr. G. H. King, Portsmouth, for his services as President during the past year.

Mr. L. F. Paris, Southampton, proposed the election of Mr. W. K. Pearce, of Southampton, as Vice-President for the ensuing year. This was seconded by Mr. G. A. Weller, Southampton, and carried unanimously.

Messrs. L. F. Glanville, P. C. Mead and F. O. Goodman were re-elected members of the Committee, and on the proposition of Mr. Hallett (Southampton), seconded by Mr. V. E. G. Churcher (Gosport), Mr. M. H. Pugh (Southampton) was elected a member of the Committee in the place of Mr. W. K. Pearce, who became *ex officio*.

Mr. H. White, Winchester, and Mr. W. H. Abbott, Southampton, were re-elected Hon. Auditors. Mr. L. F. Paris, Southampton, was re-elected Hon. Secretary and Hon. Treasurer, and Mr. C. G. A. Paris Assistant Hon. Secretary.

Messrs. A. C. Hallett, Southampton, L. N. Blake, Portsmouth, and L. F. Paris, Southampton, were re-elected representatives on the Board of Legal Studies.

Mr. H. White, Winchester, the first Hampshire solicitor to hold the office of Chairman of the Solicitors' Benevolent Association, gave a report on the work of the Association during the past year. He referred to the fact that very considerable funds had been expended in support of dependents of Hampshire members and non-members, and in particular out of the Coward Fund, for the education of the children of a Hampshire solicitor.

He referred to the fact that during the last twelve months a legacy of £1,000 had been received from the widow of a Portsmouth solicitor and he appealed for further help towards augmenting the Coward Fund.

Major Bullin, another director of the Association, supported Mr. White's appeal.

On the proposition of the President, seconded by Mr. J. C. Dominy, it was unanimously decided to vote an extra £10 10s. to the Coward Fund, in answer to the Chairman's appeal.

Mr. T. E. Brown, President, then gave a very interesting address, dealing in general with the conduct of solicitors as members of a worthy profession and proceeded to express his regret on the failure of the Government to bring out any form of insurance against war damage. He pointed out that, in his opinion, had a proper scheme been started some two years ago, either based upon fire insurance lines or as an addition to Sched. A, the nucleus fund would have been built up by this time, which would, taking a very conservative figure, have amounted to sufficient to meet any probable damage caused by enemy aircraft. He called the attention of the meeting to recent decisions of the court on the question of liability for employers to pay wages to an employee during illness.

In connection with employers and employees, he raised the question as to whether it would be possible to start a society having similar objects to the Solicitors' Benevolent Association for solicitors' clerks and their dependents, and expressed the hope that this subject might meet with the consideration of the Committee.

Mr. J. C. Dominy, Eastleigh, proposed, and Mr. G. H. King, Portsmouth, seconded, a hearty vote of thanks to the President for his interesting address.

Law Association.

The usual monthly meeting of the directors was held on the 4th December, Mr. Ernest Goddard in the chair. The other directors present were Mr. E. Evelyn Barron, Mr. Guy H. Cholmeley, Mr. Arthur E. Clarke, Mr. W. Alan Gillett, Mr. G. D. Hugh Jones, Mr. John Venning and the Secretary, Mr. Andrew H. Morton.

A sum of £310 was voted in relief of deserving applicants, two annual subscribers were elected and other general business was transacted.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL, *commencing the 16th September to 2nd December, inclusive.)*

Progress of Bills.

House of Commons.

Expiring Laws Continuance Bill [H.C.].
Read Second Time. [6th December.

Postponement of Enactments (Miscellaneous Provisions) Bill [H.C.].
Read Second Time. [6th December.

Statutory Rules and Orders.

No. 1725. **Animal.** Diseases of Animals. The Importation of Meat, etc. (Wrapping Materials) (Amendment) Order, dated November 25.

No. 1699. Animal. The Importation of Canadian Cattle (Amendment) Order, dated November 17.

No. 1718. **Coal Mines.** The Explosives in Coal Mines (Hydrox and Cardox) Order, dated November 23.

No. 1712. **Customs.** The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment (No. 13) Order, dated November 27.

No. 1739. Customs. The Import Duties (Exemption) (No. 10) Order, dated December 4. (Iron and Steel and Articles of Iron or Steel.)

No. 1653/S.120. **Emergency Powers (Defence).** The Agricultural Returns (Scotland) Order, dated September 27.

No. 1711. Emergency Powers (Defence). The Bacon (Control of Production) Order, dated November 27.

No. 1735. Emergency Powers (Defence). The Bacon (Control of Production) (No. 2) Order, dated December 1.

No. 1655/S.122. Emergency Powers (Defence). The Deer (Scotland) Order, dated November 2.

No. 1730. Emergency Powers (Defence). The Fatstock, Home-Killed Pork, Meat and Pigs (Provisional Prices) (Revocation) Order, dated November 30.

No. 1674. Emergency Powers (Defence). The Canned Fish (Returns) Order, dated November 22.

No. 1654/S.121. Emergency Powers (Defence). The Hares and Rabbits (Scotland) Order, dated November 2.

No. 1732. Emergency Powers (Defence). The Control of Hemp (No. 5) Order, dated December 1.

No. 1650/S.117. Emergency Powers (Defence). The Cultivation of Lands (Scotland) Order, dated September 4.

No. 1651/S.118. Emergency Powers (Defence). The Cultivation of Lands (Allotments) (Scotland) Order, dated September 25.

No. 1652/S.119. Emergency Powers (Defence). The Trespass on Agricultural Land (Allotments) (Scotland) Order, dated September 26.

No. 1710. Emergency Powers (Defence). The Control of Photography Order (No. 2), dated November 27.

No. 1687. Emergency Powers (Defence). Post Office. Order, dated November 24, made by the Postmaster-General as to Possession of Wireless Transmitters.

No. 1688. Emergency Powers (Defence). Post Office. Order, dated November 24, made by the Postmaster-General as to Regulation of Use of Wireless Transmitters.

No. 1689. Emergency Powers (Defence). Post Office. Order, dated November 24, made by the Postmaster-General as to Control of Wireless Transmitters and certain other Electrical Apparatus.

No. 1724. Emergency Powers (Defence). The Seed Potatoes (Maximum Prices) Order, dated November 29.

No. 1720. Emergency Powers (Defence). Standing Vehicles Order, dated November 21.

No. 1728. Emergency Powers (Defence). The Defence (War Risks Insurance) Regulations Amendment (No. 3) Order in Council, dated December 1.

No. 1734. **Excess Profits Tax.** Regulations, dated November 30.

No. 1729. **National Health Insurance** (Emergency Payment of Benefit) Regulations, dated October 31.

No. 1698. **Post Office.** The Money Order Amendment (No. 12) Regulations, dated November 16.

No. 1691. **Public Works Loans.** Further Regulations, dated November 28.

No. 1709. **Reprisals Restricting German Commerce.** Order in Council, dated November 27, framing Reprisals for restricting further the Commerce of Germany.

No. 1690. **Trading with the Enemy.** (Specified Persons) (Amendment) (No. 3) Order, dated November 23.

No. 1636. **Supreme Court, Northern Ireland.** The Northern Ireland Winter Assize Order, dated October 27.

No. 1731. **War Risks** (Commodity Insurance) (No. 5) Order, dated December 1.

Provisional Rules and Orders.

Road Vehicles. The Public Service Vehicles (Conditions of Fitness) (Amendment) Regulations, 1939.

National Health Insurance and Contributory Pensions (Collection of Contributions) Amendment Regulations, dated November 10.

Unemployment Assistance (Appeal Tribunals) (Amendment) (No. 2) Provisional Rules, dated November 6.

Draft Statutory Rules and Orders.

Road Haulage (Applications) Regulations, dated November 24.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Revised to November 14th, 1939. Supplement 1, November 22nd, and Supplement 2, November 29th, 1939.

INLAND REVENUE.

Income Tax, 1939–40. Relief in respect of Dominion Income Tax. Standard Rate of United Kingdom Income Tax at 7s. in the £, with the first £135 of Taxable Income liable at 2s. 4d. in the £.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

Mr. A. ANDREWES UTHWATT and LORD ATKIN, respectively Treasurer and Vice-Treasurer of Gray's Inn, have been re-elected to these offices for the year 1940.

Mr. ALAN GORDON STIRK, at present Assistant Solicitor in the office of the Clerk to the North Riding County Council, has been appointed Assistant Solicitor to Huddersfield Corporation. Mr. Stirk was admitted a solicitor in 1936.

Mr. ALEXANDER GRANT, K.C., has been elected Treasurer of the Inner Temple for the year 1940. Mr. T. HOLLIS WALKER has been elected Reader for the Lent Vacation, and Mr. Justice HALLETT and Mr. W. HANBURY AGGS have been elected Masters of the Bench.

Notes.

The Faculty of Laws of the University of London is re-commencing its courses in law in London for the benefit of those students who, by reason of a day-time occupation, have been unable to leave London with the colleges which have been evacuated. The courses include a full course for the Intermediate LL.B. in Roman Law, Constitutional Law, Criminal Law and the English Legal System; and the courses, which may be taken for the Final LL.B. degree, including courses on Contract, Tort, Trusts and Elements of Equity, Land Law, Conveyancing, Succession, Constitutional Laws of the British Empire, History of English Law, International Law, Administrative Law, Industrial Law, Mercantile Law, Jurisprudence and Conflict of Laws. These courses can, by special permission of the enrolling authorities, be attended by students other than those wishing to read for the LL.B. degree. Seminars are also held for the LL.M. degree in the different subjects to be studied for that degree and registrations are accepted for the degree of Ph.D. in the Faculty of Laws. Particulars can be obtained and enrolment for the courses made with University College, Gower Street, London, W.C.1, or King's College, Strand, London, W.C.2, or the London School of Economics, Canterbury Hall, Cartwright Gardens, London, W.C.1.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Dec. 11	Andrews	Jones	More
„ 12	Jones	Ritchie	Reader
„ 13	Ritchie	Blaker	Andrews
„ 14	Blaker	More	Jones
„ 15	More	Reader	Ritchie
„ 16	Reader	Andrews	Blaker

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
Dec. 11	Ritchie	Andrews	Reader	Blaker
„ 12	Blaker	Jones	Andrews	More
„ 13	More	Ritchie	Jones	Reader
„ 14	Reader	Blaker	Ritchie	Andrews
„ 15	Andrews	More	Blaker	Jones
„ 16	Jones	Reader	More	Ritchie

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 21st December, 1939.

	Div. Months.	Middle Price 6 Dec. 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	104	3 16 11	3 13 8
Consols 2½%	JAJO	67⅞xd	3 13 9	—
War Loan 3½% 1952 or after	JD	92½	3 15 8	—
Funding 4% Loan 1960-90	MN	105½	3 15 10	3 12 2
Funding 3% Loan 1959-69	AO	92¼	3 5 0	3 8 6
Funding 2¾% Loan 1952-57	JD	91	3 0 5	3 8 6
Funding 2½% Loan 1956-61	AO	85¼	2 18 8	3 10 0
Victory 4% Loan Av. life 21 years	MS	105¼	3 16 0	3 12 10
Conversion 5% Loan 1944–64	MN	108¼	4 12 4	2 15 10
Conversion 3½% Loan 1961 or after	AO	93	3 15 3	—
Conversion 3% Loan 1948-53	MS	97½	3 1 6	3 4 9
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	3 1 1
National Defence Loan 3% 1954-58	JJ	95⅜	3 2 8	3 6 1
Local Loans 3% Stock 1912 or after	JAJO	79½xd	3 15 6	—
Bank Stock	AO	309½	3 17 6	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	74½xd	3 13 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	79½xd	3 15 6	—
India 4½% 1950-55	MN	103½	4 6 11	4 1 4
India 3½% 1931 or after	JAJO	81½xd	4 5 11	—
India 3% 1948 or after	JAJO	69½xd	4 6 4	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 2
Tanganyika 4% Guaranteed 1951-71	FA	103	3 17 8	3 13 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104xd	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87	2 17 6	3 11 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97½xd	4 2 1	4 3 0
Australia (Commonw'th) 3% 1955-58	AO	83½	3 11 10	4 5 8
*Canada 4% 1953-58	MS	106½	3 15 1	3 8 2
Natal 3% 1929-49	JJ	95xd	3 3 2	3 13 11
New South Wales 3½% 1930-50	JJ	93½xd	3 14 10	4 5 0
New Zealand 3% 1945	AO	92½	3 4 10	4 11 8
Nigeria 4% 1963	AO	101¼	3 18 10	3 18 0
Queensland 3½% 1950-70	JJ	86½xd	4 0 11	4 6 1
South Africa 3½% 1953-73	JD	99½	3 10 4	3 10 6
Victoria 3½% 1929-49	AO	94½	3 14 1	4 3 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	76xd	3 18 11	—
Croydon 3% 1940–60	AO	86½	3 9 4	3 19 9
Essex County 3½% 1952-72	JD	97	3 12 2	3 13 2
Leeds 3% 1927 or after	JJ	76	3 18 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	89xd	3 18 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66	3 15 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	78	3 16 11	—
Manchester 3% 1941 or after	FA	76	3 18 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	94½	2 12 11	3 3 0
Metropolitan Water Board 3% "A" 1963-2003	AO	78½	3 16 5	3 18 5
Do. do. 3% "B" 1934-2003	MS	81	3 14 1	3 15 10
Do. do. 3% "E" 1953-73	JJ	85	3 10 7	3 15 10
*Middlesex County Council 4% 1952-72	MN	102	3 18 5	3 16 0
* Do. do. 4½% 1950-70	MN	105	4 5 9	3 18 6
Nottingham 3% Irredeemable	MN	75½	3 19 6	—
Sheffield Corp. 3½% 1968	JJ	95	3 13 8	3 15 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	100½	3 19 7	—
Gt. Western Rly. 4½% Debenture	JJ	105½	4 5 4	—
Gt. Western Rly. 5% Debenture	JJ	117½	4 5 1	—
Gt. Western Rly. 5% Rent Charge	FA	109	4 11 9	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	107	4 13 5	—
Gt. Western Rly. 5% Preference	MA	86	5 16 3	—
Southern Rly. 4% Debenture	JJ	100½	3 19 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	102½	3 18 1	3 16 8
Southern Rly. 5% Guaranteed	MA	106½	4 13 11	—
Southern Rly. 5% Preference	MA	86	5 13 8	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.